

E-999/ CI-91-923 ORDER FINDING THAT MINNESOTA'S RESOURCE PLANNING  
PROCESS MEETS CERTAIN FEDERAL REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of an  
Investigation into the Effects  
of the Clean Air Act Amendments  
on Minnesota Electric Utilities

ISSUE DATE: July 23, 1993

DOCKET NO. E-999/ CI-91-923

ORDER FINDING THAT MINNESOTA'S  
RESOURCE PLANNING PROCESS MEETS  
CERTAIN FEDERAL REQUIREMENTS

**PROCEDURAL HISTORY**

The Federal Clean Air Act Amendments (CAAA) of 1990 established an allowance trading system for the emission of sulphur dioxide (SO<sub>2</sub>). As part of the allowance system, 300,000 allowances were set aside to be awarded by the Environmental Protection Agency (EPA) to utilities which 1) implement qualified energy conservation measures or 2) utilize renewable energy between January 1, 1992 and December 31, 1999. In order to be eligible to receive an allowance, a Minnesota utility must demonstrate to the EPA that it is subject to a qualified integrated resource planning process.

On May 17, 1993, in preparation for its application to the EPA for allowances in connection with energy purchased from Potlatch Cogeneration Facility, Otter Tail Power Company (OTP or the Company) applied to the Commission for certification that OTP was subject to the Commission's least cost planning process and that this process met the requirements of 40 C.F.R. § 73.82 (a)(4) of the EPA rules governing the CAAA. That application is being handled in a separate docket. Docket No. E-017/M-93-675.

On May 24, 1993, the Commission issued a Notice to all four major investor-owned electric utilities and all intervenors in those utilities' resource plan proceedings. The Commission requested comments on whether the Commission's integrated resource planning process met the requirements of § 78.82 (a)(4) (i-vi) of the CAAA rules.

Comments were received from the Minnesota Department of Public Service (the Department), the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), the Izaak Walton League of America (IWLA), Minnesota Power (MP), Northern States

Power (NSP), and OTP. All parties but IWLA agreed that Minnesota's integrated resource planning process was consistent with the intent of the CAAA rules.

On July 8, 1993, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. BACKGROUND: THE ALLOWANCE RESERVE PROGRAM**

In adopting the Clean Air Act Amendments of 1990 (CAAA), Congress undertook a national effort to reduce sulphur dioxide (SO<sub>2</sub>) emissions and encourage conservation. Among other things, the CAAA and the regulations adopted to implement them established an Energy Conservation and Renewable Energy Allowance Reserve Program. Under the Program, the EPA is authorized to award up to 300,000 allowances<sup>1</sup> to utilities that implement qualified energy conservation measures or utilize renewable energy beginning January 1, 1993. 40 C.F.R. § 73.80 (a)-(c).

The Commission also has an interest in conservation and in promoting the increased use of renewable energy, consistent with the public interest, by all Minnesota utilities. The Commission views the allowances available to Minnesota utilities under the Allowance Reserve Program as having significant potential to promote these goals in the state.

Under the Allowance Reserve Program, the EPA will allocate allowances based on verified kilowatt hours saved through the use of one or more qualified energy conservation measures or based on kilowatt hours generated by qualified renewable energy generation. Whether an applicant's energy conservation measure or renewable energy generation is "qualified" will be determined by the EPA pursuant to criteria established in the regulations.

### **II. THE COMMISSION'S ROLE**

The allowance-award process established by the CAAA regulations involves a screening role for the Commission. Among the requirements that a rate-regulated utility applicant must meet in order to be eligible for an allowance is the requirement that the State Utility Commission having rate-making jurisdiction over the applicant must certify two things (make two findings) with respect to each application:

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<sup>1</sup> The monetary value of each allowance, initially set at \$1,500 by 40 C.F.R. § 73.72(c), is established by the market.

**Finding 1:** Either that the applying utility is subject to a least cost plan that meets five criteria specified in the regulation or that it is subject to a least cost planning process that meets those criteria; and

**Finding 2:** That the utility is implementing a Commission-approved least cost plan or least cost planning process to the maximum extent practicable.

### III. SCOPE OF THIS ORDER

In this Order, the Commission is not considering any particular proposal but is preparing to execute its screening role in the allowance award process.

### IV. COMMISSION ANALYSIS AND ACTION

#### A. Finding 1

With respect to the first part of the certification (Finding 1), the Commission notes that it has the option to determine

- 1) whether the utility is subject to a least cost planning process that meets the EPA's five criteria or
- 2) that it will decide on a case by case basis in future applicant dockets whether the applying utility's least cost plan meets those criteria.

To expedite the Commission's screening review of utilities' allowance proposals in future dockets, the Commission has chosen to consider, in this generic proceeding, whether the least cost planning process used by all Minnesota electric utilities pursuant to Minn. Rules, Chapter 7842<sup>2</sup> meets the EPA criteria. After thorough analysis of the Commission's least cost planning process, the Commission has found that it its process meets the EPA criteria in all respects. The analysis upon which this determination is based follows.

According to the CAAA rule [40 C.F.R. § 78.32(a)(4)], a satisfactory least cost plan or least cost planning process is one that

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<sup>2</sup> The Commission's "least cost planning process" is its resource planning process. References in the Order to the Commission's least cost planning process shall be understood to refer to its resource planning process.

(i) provides an opportunity for public notice and comment or other public participation processes;

(ii) evaluates the full range of existing and incremental resources in order to meet expected future demand at lowest system cost;

(iii) treats demand-side resources and supply-side resources on a consistent and integrated basis;

(iv) takes into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk; and

(v) may take into account other factors, including social and environmental costs and benefits of resource investments.

The Commission's resource planning process is a "least cost planning process" as that term is used in the CAAA regulations. The IRP process is set forth and governed by Minn. Rules, Chapter 7843. All major investor-owned electric utilities in Minnesota are subject to this least cost planning process. References in the Order to the Commission's least cost planning process shall be understood to refer to the Commission's resource planning process.

#### 1. Public Participation

No party disputed that the Commission's least cost planning process allows adequate opportunity for public notice and comment.

#### 2. Full Range of Resources

ILWA suggested that the Commission's least cost planning process does not meet criterion (ii) because it does not require a utility to evaluate the full range of resources in its plan; the Commission's rules only require the utility to list the resources it considers. However, the EPA regulation makes it clear that the five criteria (including the "full range" requirement) may be met by either the utility's least cost plan or by the least cost planning process that the utility is subject to. In this case, criterion (ii) is met by the fact that the Commission's least cost planning process provides for and historically has included an evaluation of the full range of resources. The Commission's rules, which list a wide range of resources which must be considered at a minimum, together with provision for intervenor comments and replies, assure continuing compliance with that criterion.

### 3. Consistent and Integrated Treatment

Criterion (iii) requires that the planning process treat demand-side resources and supply side resources on a consistent and integrated basis. Under the Commission's least cost planning process as delineated in the rules, all resources must be considered according to the same standards. The Commission's process promotes integration and, as a matter of fact, the Commission's Orders regarding the resource plans of each Minnesota utility have contained specific findings for each utility which will move them closer to complete integration in future resource plans.

### 4. Consideration of Risk Factors

Criterion (iv) requires the planning process to take into account necessary factors for system operation such as diversity, reliability, dispatchability, and other risk factors. The Commission's least cost planning rules clearly satisfy these requirements. The rules require the utility to evaluate all significant resources for "availability, reliability, cost, socioeconomic effects, and environmental effects." Minn. Rules, Part 7843.0400, Subpart 3A. Further, the rules require the Commission to evaluate resource options according to their ability to "maintain or improve the adequacy and reliability of utility service" and to "limit the risk of adverse effects on the utility and its customers." Minn. Rules, Part 7843.0500, Subpart 3.

### 5. Consideration of Other Factors

ILWA argued that the Commission's process does not comply with criterion (v) because the Commission does not quantify environmental costs. However, the regulation makes consideration of environmental cost optional rather than mandatory and, more important, does not prescribe that consideration of environmental cost be based on a quantification of that cost. Rather, the regulation appears to countenance a qualitative consideration of that factor. The Commission's process meets criterion (v) because it provides for the qualitative consideration of the social and environmental costs and benefit of the utility's resource investments.

Finally, IWLA argued that the Commission's least cost planning process was not an approval process, did not result in the Commission "approving" utilities' least cost plans, and therefore did not meet the requirement implied in 40 C.F.R. § 73.82(a)(6). However, the regulation cited by IWLA expressly includes processes that approve or accept least cost plans. The Commission has issued Orders either accepting or approving the resource plans of the four utilities subject to its resource planning rules.

Based on the foregoing analysis, the Commission concludes that Minnesota's major investor-owned electric utilities are subject to a least cost planning process that meets the requirements of paragraphs (a)(4)(i) through (v) of 40 C.F.R. § 73.82. The Commission's finding is generic in nature and will be applied in subsequent dockets dealing with specific requests from these utilities for "certification."

## **B. Finding 2**

The second item that the Commission must certify as a prerequisite to the EPA granting an allowance is that the applicant-utility is implementing a Commission-approved least cost plan or planning process "to the maximum extent practicable." 40 C.F.R. § 73.82(a)(4)(vi). That finding is, of course, beyond the scope of this proceeding.

In separate proceedings initiated to process particular utility requests for "certification", the Commission will require such proof of maximum practicable implementation as is necessary and may make its finding on this matter either ex parte or, at its discretion, after a notice and comment period and include any hearing on the matter that the Commission deems appropriate.

## **C. Additional Commission Findings Not Required**

The IWLA argued that 40 C.F.R. § 73.82(a)(4)(vi) requires that the Commission find that the utility is implementing either the five standards cited previously, or some other definition of "ideal" least cost planning, to the maximum extent possible. This interpretation is incorrect. A plain reading of the regulation's language shows that the thing which the Commission must find is being implemented to the maximum extent possible is the "least cost plan or a least cost planning process."

IWLA also argued that the CAAA regulation requires the Commission to find whether the utility's renewable energy or conservation measure consistent with the utility's plan. However, the regulation makes it clear that consistency of a proposed project with the utility's plan is something that the EPA determines, not the Commission. The consistency requirement [40 C.F.R. § 73.82(a)(5)] is simply not included in the items that the Commission must certify. See 40 C.F.R. § 73.82(a)(6).

As the Commission's resource planning Orders have shown, the Commission shares IWLA's interest in motivating utilities to increase the effectiveness of their resource planning. However, the certification function that the Commission performs pursuant to the EPA process does not entail the opportunities for review advocated by the IWLA. The Commission is confident that its own ongoing least cost planning process affords adequate

opportunities for interested parties and the Commission to evaluate and encourage, as necessary, utilities' resource planning efforts.

**ORDER**

1. The Commission hereby finds that its resource planning process governed by Minn. Rules, Chapter 7843 is a "least cost planning process" as that term is used in 40 C.F.R. § 73.82(a)(4) and that it meets the requirements for such a process set forth in paragraphs (i) through (v) of that section.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)